

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	NO. 1:02-CR-00095
	:	
v.	:	
	:	OPINION AND ORDER
	:	
MARIO BAKER.	:	
	:	

This matter is before the Court on Defendant's Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(c)(2)(doc. 36), and the government's Response in Opposition (doc. 37).

On November 1, 2007, the Sentencing Commission promulgated Guideline Amendment 706 to the United States Sentencing Guidelines, lowering the offense levels for crack cocaine offenses by two levels. U.S.S.G. 2D1.1 (2007); U.S.S.G. App. C. Amend. 706. In the instant motion, Defendant requests the Court reduce his sentence from 120 months to 101 months based on the retroactive application of such "crack amendment" (Id.).

Defendant was convicted of count one of the indictment, possession of cocaine with the intent to distribute, and count three, possession of a firearm by a convicted felon (Id.). The Court sentenced Defendant to concurrent 120-month sentences on both counts (Id.). As such, the government responds that because count three is not subject to any reduction under the crack amendment, any reduction as to count one would not alter the length of Defendant's sentence (doc. 37).

Additionally, the government opposes any reduction due to public safety concerns (Id.). In the government's view, Defendant's prior acts of misconduct in conjunction with the disciplinary problems created by Defendant during incarceration demonstrate Defendant is a danger to the community (Id.).

Having reviewed this matter, the Court finds the position of the government well-taken that a reduction in Defendant's sentence would be nugatory because counts one and three of the sentence must be concurrently served. Count three of the indictment, for violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), is not subject to reduction pursuant to the crack amendment (Id.). Therefore, any reduction of count one would not alter Defendant's sentence length. Accordingly, the Court DENIES Defendant's Motion to Reduce Sentence (doc. 36).

SO ORDERED.

Dated: June 25, 2008

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge